

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

January 24, 2003

IN RE:

**TELEPHONE BROADCAST
COMPANY**

DOCKET NO. 02-01171

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on January 6, 2003, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Telephone Broadcast Company ("TBC" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³

The CSD’s investigation in this docket commenced after it received a complaint on May 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from TBC on May 7, 2002. The CSD provided TBC with notice of this complaint on May 24, 2002. At the time this solicitation occurred, TBC was not registered in the Do-Not-Call Program.

Between May 14, 2002 and June 18, 2002, the CSD received twelve (12) additional complaints against TBC from persons properly listed on the Do-Not-Call register alleging that they had received telephone solicitations from TBC. The CSD provided TBC with notice of each of the complaints.

The proposed Settlement Agreement was negotiated as a result of the CSD’s investigation into the complaints against TBC. The maximum penalty faced by TBC in this docket is twenty-eight thousand dollars (\$28,000) arising from the thirteen (13) complaints and TBC’s failure to register in the Do-Not-Call Program.

In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

³ Tenn. Code Ann. § 65-4-405(f).

violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

TBC is a small company with approximately three (3) employees. Its executive office is located in Augusta, Georgia. TBC registered in the Do-Not-Call Program on May 24, 2002. During the CSD's investigation, TBC did not dispute that the calls were made and expressed an interest in resolving this matter. TBC also agreed to pay to the Authority the amount of fourteen thousand dollars (\$14,000) in settlement of these violations no later than thirty (30) days from the date the Authority approves the Settlement Agreement.⁴ In addition, TBC renewed its registration with the TRA as a telephone solicitor on June 10, 2002.

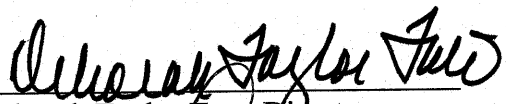
A representative of TBC participated telephonically during the Authority Conference on January 6, 2003. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

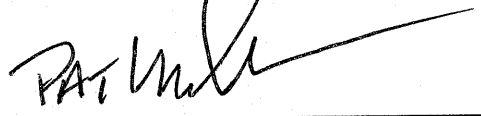
IT IS THEREFORE ORDERED THAT:

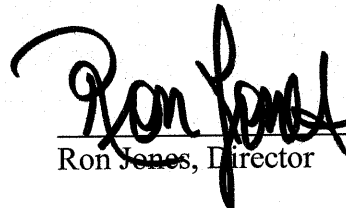
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of fourteen thousand dollars (\$14,000) shall be paid by TBC to the TRA no later than thirty (30) days from the date of the Authority's approval of the Settlement Agreement.

⁴ Payment of \$14,000 shall be made no later than February 5, 2003. The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing Docket No. 02-01171.

3. Upon payment of the amount of fourteen thousand dollars (\$14,000) and compliance with the terms of the Settlement Agreement attached hereto, TBC is excused from further proceedings in this matter, provided that, in the event of any failure on the part of TBC to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Deborah Taylor Tate, Director


Pat Miller, Director


Ron Jones, Director

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THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

TELEPHONE BROADCAST COMPANY

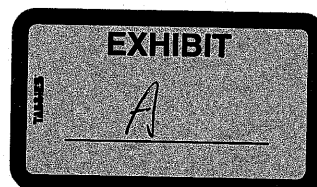
TRA DOCKET NO. 02-01171

DO-NOT-CALL PROGRAM
FILE NUMBERS
T02-00298
T02-00300
T02-00302
T02-00303
T02-00304
T02-00305
T02-00318
T02-00325
T02-00332
T02-00333
T02-00334
T02-00336
T02-00366

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Telephone Broadcast Company ("Telephone Broadcast" or the "Company"). This Settlement Agreement is subject to the approval of the TRA.

This Settlement Agreement pertains to thirteen (13) separate complaints received by the CSD alleging that Telephone Broadcast violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations. TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons and entities from



knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(d), requires that persons and entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Telephone Broadcast registered with the Authority as a Solicitor on May 24, 2002.

First Complaint: The CSD's investigation in this docket commenced after it received a complaint (T02-00300) on May 10, 2002, alleging that the complainant, Carol Raschke, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast, made on behalf of Pacific Guarantee Mortgage Corporation, ("Pacific") on May 7, 2002. Through its investigation, the CSD learned that Telephone Broadcast was making automated, prerecorded solicitation calls on behalf of two companies, Pacific and Advantage Investors Mortgage Corporation ("Advantage"). The CSD provided Telephone Broadcast with notice of this complaint on May 24, 2002. At the time this call was made, Telephone Broadcast was not registered in the Tennessee Do-Not Call Program.

Second Complaint: While investigating the original complaint in this docket, the CSD received a second complaint (T02-00298) on May 14, 2002, alleging that the complainant, Glenda Wood, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 10,

2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Third Complaint: The CSD received a third complaint (T02-00305) on May 15, 2002, alleging that the complainant, Shirley Clinard, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 10, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Fourth Complaint: The CSD received its fourth complaint (T02-00302) on May 16, 2002, alleging that the complainant, Curtis Catron, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 13, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Fifth Complaint: The CSD received its fifth complaint (T02-00304) on May 16, 2002, alleging that the complainant, Kenneth Parker, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 10, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Sixth Complaint: The CSD received its sixth complaint (T02-00303) on May 17, 2002, alleging that the complainant, Karl Caughman, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 9, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 24, 2002.

Seventh Complaint: The CSD received its seventh complaint (T02-00318) on May 22, 2002, alleging that the complainant, Connie Gowder, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Pacific on May 17, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 24, 2002.

Eighth Complaint: The CSD received its eighth complaint (T02-00332) on May 24, 2002, alleging that the complainant, Jeanne Smith, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 15, 2002. The CSD provided Telephone Broadcast with notice of this complaint on June 3, 2002.

Ninth Complaint: The CSD received its ninth complaint (T02-00336) on May 28, 2002, alleging that the complainant, Rhonda Bogard, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage on May 15, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Tenth Complaint: The CSD received its third complaint (T02-00333) on May 29, 2002, alleging that the complainant, Frances Anderson, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Pacific, on May 16, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Eleventh Complaint: The CSD received its fourth complaint (T02-00334) on May 29, 2002, alleging that the complainant, Phillip Roeser, a person properly listed on the Do-

Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Pacific, on May 17, 2002. The CSD provided Telephone Broadcast with notice of this complaint on May 30, 2002.

Twelfth Complaint: The CSD received its twelfth complaint (T02-00379) on June 18, 2002, alleging that the complainant, Robert Kesler, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Advantage, on May 8, 2002. The CSD provided Telephone Broadcast with notice of this complaint on June 24, 2002.

Thirteenth Complaint: The CSD received its thirteenth complaint (T02-00366) on June 11, 2002, alleging that the complainant, Vanessa Steelman, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Telephone Broadcast on behalf of Pacific, on May 9, 2002. The CSD provided Telephone Broadcast with notice of this complaint on June 20, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Telephone Broadcast in this proceeding is twenty-eight thousand dollars (\$28,000), arising from the thirteen (13) solicitation complaints (\$2,000 each) and the failure to register in the Do-Not-Call Program (\$2,000). CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations which resulted in this agreement, including Pacific's size, financial status, and good faith and the gravity of the violations.

Telephone Broadcast is a small company that has approximately three (3) employees. Its executive office is located in Augusta, Georgia. During the investigation, Telephone Broadcast demonstrated its good faith by registering as a telephone solicitor with the TRA on May 24, 2002, four days after receiving notice of the first violation. Telephone Broadcast did not dispute that the calls were made and expressed an interest in resolving this matter. Further, after receiving notice of the complaints, Telephone Broadcast began its own investigation of the alleged complaints.

In an effort to resolve these thirteen (13) complaints, represented by the file numbers above, CSD and Telephone Broadcast agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the TRA:

1. Telephone Broadcast neither admits nor denies that the thirteen (13) complaints against it are true and valid complaints and are in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Telephone Broadcast has been registered with the TRA as a telephone solicitor since May 24, 2002, and obtains a monthly copy of the Do-Not-Call register.
3. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Telephone Broadcast has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) and has acted in a cooperative manner in attempting to resolve this matter.
4. Telephone Broadcast agrees to make a settlement payment of fourteen thousand dollars (\$14,000.00), as authorized by TENN. CODE ANN. §65-4-405(f) to the TRA within thirty

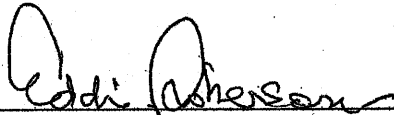
(30) days of the date the TRA approves this Settlement Agreement.¹ Upon payment of the amount of fourteen thousand dollars (\$14,000.00) in compliance with the terms and conditions of this Settlement Agreement, Telephone Broadcast will be excused from further proceedings in this matter.

5. Telephone Broadcast agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. The Company voluntarily subscribed to the TRA's Do-Not-Call Register and has taken measures designed to prevent calls to Tennessee residents listed on the Do-Not-Call Register.
6. Telephone Broadcast agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
7. The TRA and Telephone Broadcast agree that the payment of \$14,000.00 to the TRA represents the settlement of all claims the TRA could bring against Telephone Broadcast up to and including the date of this Settlement Agreement.
8. If any clause, provision or section of this Settlement Agreement is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
9. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to

written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

10. In the event of any failure on the part of Telephone Broadcast to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket for the purpose of securing compliance and enforcing the Settlement Agreement. Any costs incurred in enforcing the Settlement Agreement shall be paid by Telephone Broadcast.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

12-17-02
Date



Signature

Carlos B. Rojas
Print Name

Manager
Print Title
Telephone Broadcast Company

11/19/02
Date